IN THE HIGH COURT OF GUJARAT AT AHMEDABAD2

SPECIAL CIVIL APPLICATION No. 2976 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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SUMANBEN DAMJIBHAI SUKHABHAI PATEL - detenu(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR BM MANGUKIYA for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 22/03/2007

ORAL JUDGMENT

1.0 By way of this petition, the detenu has challenged the order of detention dated 21.11.2006 passed by Commissioner of Police, Surat City under the provisions of sub-Section (1) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as the 'PASA Act').

2.0 Learned Advocate for the detenu has

invited my attention to the order of detention dated 21.11.2006 by which the detenu was arrested and sent to Sabarmati Central Jail. As the grounds of detention one offence has been shown as registered against the detenu which pertains to 'immoral trafficking'.

2.1 Learned Advocate has stated that on the basis of aforesaid single offence, the detaining Authority came to the conclusion that the detenu was immoral traffic offender within the meaning of Section 3(1)of the P.A.S.A. Act. It was also stated in the impugned order that as the said activities of the detenu are dangerous and affecting maintenance of 'public order', order of detention has been passed against her.

2.2 In support of his case, learned Advocate has placed reliance on a decision of this Court in the case of ***"Vahidbhai Saiyadbhai Sheikh v. State of Gujarat & Ors"*** reported in 2003(3) GLH 697 wherein at Para-9 it has been held as under:

> **"9.** Strikingly, in this case, the

> authority did not choose even to file prosecution and the question of detenu being released on bail could be considered when prosecution is filed and some material is placed before the detaining authority that the detenu was likely to be released on bail. The detaining authority, in this case, instead has chosen to rely upon an incident and from the said incident, the detaining authority reached to subjective satisfaction that the detenu was likely to continue his activities in future when there was no material at all on record revealing such repeating tendency on the part of the detenu. The order of detention, therefore, is vitiated by vice of non-application of mind."

3.0 Heard learned Counsel for the parties and perused the documents placed on record. I have also considered factual and legal aspects emerging from the record of the petition and the rival submissions. In the case on hand, the only material is one offence registered against the detenu which pertains to 'immoral trafficking'. Registration of a solitary offence is not sufficient material to infer a certain habit of the detenu and that on the basis of solitary registered offence it would be far fetching to

draw inference that the detenu was likely to commit such crimes again and again. I am, therefore, of the view that the detaining Authority has passed the order of detention without there being any credible or cogent material on record in this behalf. Even, taking into consideration, facts and circumstances of the case and allegations made against the detenu it can be, at the most, said that there is disturbance of only 'law and order' and not 'public order'.

3.1 Hence, in view of the above discussion as well as in view of the decision of this Court in the case of ***"Vahidbhai Saiyadbhai Sheikh"***(Supra), this Court is of the opinion that the order of detention deserves to be quashed and set aside.

4.0 In the result, this petition is allowed. The order of detention dated 21.11.2006 passed by Commissioner of Police, Surat city is hereby quashed and set aside. The detenu is, therefore, ordered to be set at liberty forthwith, if she is

not required in connection with any other case by the Authority. Rule is made absolute. Direct service is permitted.

(K.S. Jhaveri,J.)

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